

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

22CV13859

BRUCE LANDREY, an individual, PAUL
LORENZINI, an individual, RICHARD
SANDVIK, an individual, JOHN J. SURINA,
JR., an individual and EDWARD
WALLACE, an individual,

Plaintiffs,

v.

NUSCALE POWER, LLC, an Oregon limited
liability company,

Defendant.

Case No.

COMPLAINT

(Declaratory Judgment Under ORS 28.010, *et seq.*; Injunction)

Fee Statute: ORS 21.135(1), (2)(f) \$281

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL DEMANDED

Plaintiffs Bruce Landrey, Paul Lorenzini, Richard Sandvik, John J. Surina, Jr. and
Edward Wallace (collectively the “Common Members”) allege as follows:

FACTS

1.

This case addresses pending breaches by Defendant of the rights of its Common
Members that, if implemented, will damage the value of Common Units by as much as \$80-90
million. As discussed below, Defendant has approved, but has not yet implemented,
amendments to its operating agreement and a conversion of Preferred Units to Common Units
that will be extremely detrimental to the value of Common Units. Defendant approved the
pending amendments and conversion without the approval or a vote of the Common Members, in
violation of the company’s operating agreement and Oregon law. Plaintiffs seek a determination
from this Court of their rights, and an injunction to prevent implementation of these violations of
their rights.

2.

Plaintiffs Bruce Landrey, Paul Lorenzini, Richard Sandvik, John J. Surina, Jr. and Edward Wallace are each Common Members of Defendant NuScale Power, LLC (“NuScale”). Collectively, the Common Members hold a significant, but not controlling, percentage of the Common Units in NuScale.

3.

Defendant NuScale is an Oregon limited liability company with its principal place of business in Washington County, Oregon.

4.

The Common Members and NuScale are parties to the Fifth Amended and Restated Operating Agreement of NuScale Power, LLC, dated April 30, 2021 (the “Current Operating Agreement”).

5.

On or about December 14, 2021, NuScale announced that it had entered into an agreement and plan of merger with Spring Valley Acquisition Corporation (“Spring Valley”), a publicly traded special purpose acquisition company. Following the proposed merger, NuScale will be the surviving entity. Plaintiffs generally support the merger and do not dispute the \$1.875 billion stated value for the existing equity in NuScale. However, as discussed below, Plaintiffs oppose other actions that have been approved, but not implemented, in connection with the transaction.

6.

As part of the transaction, NuScale has approved replacing the Current Operating Agreement with a Sixth Amended and Restated Operating Agreement (the “Pending Operating Agreement”) to become effective immediately at the time of the merger. The Pending Operating Agreement was adopted by NuScale’s Board of Managers at a meeting on December 21, 2021. Only holders of Preferred Units voted to approve the Pending Operating Agreement. NuScale

1 has asserted that Common Members have no right to vote on the pending amendments to the
2 operating agreement.

3 7.

4 Under the Pending Operating Agreement, all outstanding Preferred Units and Common
5 units of NuScale will be converted to Common Units (“the Preferred Conversion”). Under the
6 Preferred Conversion, each outstanding Preferred Unit will be reclassified at between 1.56 and
7 1.63 Common Units, depending on the class of the Preferred Unit; each outstanding Common
8 Unit would be reclassified as a single Common Unit. The Preferred Conversion is contrary to the
9 Current Operating Agreement and Oregon law. Plaintiffs oppose the Preferred Conversion.
10 NuScale has asserted that Common Members have no vote or rights as to the Preferred
11 Conversion.

12 8.

13 Under the Current Operating Agreement, there are approximately 738 million Common
14 Units or options on Common Units. After the Preferred Conversion, there would be
15 approximately 1,107 million Common Units. The practical effect of the Preferred Conversion
16 would be to dilute the value of current Common Units by approximately one-third, or
17 approximately \$80-90 million. Existing Common Unit Members will receive approximately
18 33% fewer shares in the surviving corporation if the Preferred Conversion is implemented.

19 9.

20 There is nothing in the Current Operating Agreement that would allow the Preferred
21 Units to be converted to Common Units at the ratios set forth in the Preferred Conversion, or at
22 any ratio other than a 1 to 1 ratio.

23 10.

24 Under the Current Operating Agreement, because the Preferred Conversion would impact
25 the distribution rights of the Common Members, the Preferred Conversion requires approval of a
26 majority the Common Members, consenting as a separate class.

11.

NuScale has not sought, and has not obtained, approval of the Common Members to implement the Preferred Conversion. NuScale has taken the position that it will proceed with the Preferred Conversion without seeking or obtaining approval of the Common Members.

12.

NuScale intends to proceed with the merger, implement the Pending Operating Agreement and enact the Preferred Conversion pursuant to a vote of Spring Valley shareholders on or before April 28, 2022.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment Under ORS 28.010, *et seq.*)

13.

Plaintiffs reallege and incorporate paragraphs 1-12 as if fully stated herein.

14.

ORS 28.010 provides this Court with the power to declare rights and legal relations between parties. ORS 28.020 explicitly provides: “Any interested person under a * * * written contract or other writing constituting a contract * * * may have determined any question of construction or validity arising under any such * * * contract * * * and obtain a declaration of rights, status or legal relations thereunder.” ORS 28.030 provides: “A contract may be construed either before or after there has been a breach.”

15.

The Existing Operating Agreement is a “contract” for the purposes of ORS 28.020 and ORS 28.030.

16.

Pursuant to the Oregon Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs are entitled to a declaration providing that the Preferred Conversion in the Pending Operating Agreement, as contemplated by the plan of merger with Spring Valley:

- 1 a. Violates the Current Operating Agreement;
- 2 b. Cannot occur or be deemed valid absent approval of a majority vote the Common
- 3 Members consenting as a separate class;
- 4 c. Constitutes minority member oppression and would improperly dilute the value of
- 5 the Common Members' Common Units.

6 **SECOND CLAIM FOR RELIEF**

7 (Injunction)

8 17.

9 Plaintiffs reallege and incorporate paragraphs 1-16 as if fully stated herein.

10 18.

11 Plaintiffs seek an injunction prohibiting NuScale from executing the Preferred
12 Conversion or implementing the Pending Operating Agreement. If the Preferred Conversion is
13 executed or the Pending Operating Agreement is implemented, Plaintiffs' rights as Common
14 Members will be severely damaged.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment as follows:

- 17 1. Declaring that the Preferred Conversion in the Pending Operating Agreement, as
- 18 contemplated by the merger and plan of merger with Spring Valley:
 - 19 a. Violates the Current Operating Agreement;
 - 20 b. Cannot occur or be deemed valid absent approval of a majority vote the
 - 21 Common Members consenting as a separate class;
 - 22 c. Constitutes minority member oppression and would improperly dilute the
 - 23 value of the Common Members' Common Units.
- 24 2. Enjoining the Preferred Conversion and implementation of the Pending Operating
- 25 Agreement.
- 26 3. Plaintiffs' costs and disbursements incurred herein.

1 4. Prejudgment interest.

2 5. Such other relief as the Court deems just and proper.

3 **JURY DEMAND**

4 Plaintiffs demand a trial by jury for all claims for which that right is available.

5
6 DATED this 25th day of April, 2022.

7
8 STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

9 By: s/Timothy S. DeJong

10 **Keith A. Ketterling**, OSB No. 913368

Timothy S. DeJong, OSB No. 940662

11 209 SW Oak Street, Suite 500

12 Portland, OR 97204

13 Telephone: (503) 227-1600

14 Facsimile: (503) 227-6840

Email: kketterling@stollberne.com

tdejong@stollberne.com

15 Attorneys for Plaintiffs

16 Trial Attorney: Keith A. Ketterling, OSB No. 913368